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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,816	05/30/2004	Robert Glenn Miller	RM01	3815

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EXAMINER

HUSAR, STEPHEN F

ART UNIT PAPER NUMBER

2875

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/709,816

Applicant(s)

MILLER, ROBERT GLENN

Examiner

Stephen F. Husar

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites the limitation "said lens" in line 1. There is insufficient antecedent basis for this limitation in the claim. Note no "lens" has been previously recited in claim 13 or claim 1.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 9-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by SHALVI (6120165). Re claim 1, Shalvi shows in Fig.1 ; a

night light "15" that is always on, a safety light "16" that provides more light than the night light "15" and sensor "14" that turns on the safety light "16" when a person is detected and turns it off when the person is no longer detected. Re claims 9-11, note sensor "14" is a passive infra-red detector which turns the safety light off after 30 seconds of detecting no presence of a person see col.3, lines 21-25. Re claim 13, note that both lights use clear prismatic diffuser lenses.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 2,3,5,8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over SHALVI (6120165). Shalvi discloses the invention substantially as claimed except for the specific wattage or foot-candles of light used in the night-light and safety light. It is well known to provide for changes in size and proportion of elements based on the intended environment of operation (see MPEP 2144.04; *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955)). It would have been obvious to one of ordinary skill in the art at the time of the invention to use lamps of the recited wattage and foot candles in Shalvi since Shalvi discloses the use of a low intensity night light and a halogen safety light which are known for their high intensity and the recited light values are those of low intensity light and a high intensity light.
8. Claims 4,6,12,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over SHALVI (6120165) as applied to claims 1 and 18 above, and further in view of BLACKMAN (5713655). Shalvi show the invention substantially as claimed except for the use of a fluorescent night light as per claim 4 and a fluorescent safety light as per claim 6. Note that claim 12 requires an emergency ballast which would be inherent with the

use of fluorescent lamps and claims 19 and 20 further recite that both the safety and night-light are fluorescent lamps. Blackman is applied to show that it is known in the art to provide a lamp housing with a night-light and safety light and teaches using fluorescent lamps in place of Shalvi's incandescent lamps (see col.3, lines 23-30). It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute fluorescent lamps for Shalvi's incandescent lamps as taught by Blackman for the purpose and advantage of lower energy consumption.

9. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over SHALVI (6120165) as applied to claim 1 above, and further in view of BUCKMASTER (6045232). Shalvi shows the invention substantially as claimed except for its use in a building corridor or stairwell. Buckmaster shows in Fig.2 the use of a lamp housing having a night light and safety light like that of Shalvi in a building corridor and stairwell. It would have been obvious to one of ordinary skill in the art at the time of the invention to locate and use Shalvi's night light and safety light combination in a building stairwell and corridor as shown by Buckmaster for the purpose of increasing the safety and security in building stairwells and corridors.

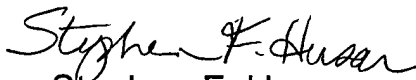
***Allowable Subject Matter***

10. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Husar whose telephone number is 571-272-2371. The examiner can normally be reached on M-W and F from 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen F. Husar  
Primary Examiner  
Art Unit 2875

SFH